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Marijuana

Clarification of the New Drug Code (7350) for Marijuana Extract

Note regarding this rule – In light of questions that the Drug Enforcement Administration has received from members of the public following the publication of the [Final Rule establishing a new Controlled Substance Code Number \(drug code\) for marijuana extract](#), DEA makes the following clarification:

- The new drug code (7350) established in the Final Rule does not include materials or products that are excluded from the definition of marijuana set forth in the Controlled Substances Act (CSA).¹
- The new drug code includes only those extracts that fall within the CSA definition of marijuana.
- If a product consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360).

As explained in the Final Rule, the creation of this new drug code was primarily intended to give DEA more precise accounting to assist the agency in carrying out its obligations to provide certain reports required by U.S. treaty obligations. Because the Final Rule did not add any substance to the schedules that was not already controlled, and did not change the schedule of any substance, it was not a scheduling action under [21 U.S.C. §§ 811 and 812](#).

The new drug code is a subset of what has always been included in the CSA definition of marijuana. By creating a new drug code for marijuana extract, the Final Rule divides into more descriptive pieces the materials, compounds, mixtures, and preparations that fall within the CSA definition of marijuana. Both drug code 7360 (marijuana) and new drug code 7350 (marijuana extract) are limited to that which falls within the CSA definition of marijuana.

Because recent public inquiries that DEA has received following the publication of the Final Rule suggest there may be some misunderstanding about the source of cannabinoids in the cannabis plant, we also note the following botanical considerations. As the scientific literature indicates, cannabinoids, such as tetrahydrocannabinols (THC), cannabinols (CBN) and cannabidiols (CBD), are found in the parts of the cannabis plant that fall within the CSA definition of marijuana, such as the flowering tops, resin, and leaves.² According to the scientific literature, cannabinoids are not found in the parts of the cannabis plant that are excluded from the CSA definition of marijuana, except for trace amounts (typically, only parts per million)³ that may be found where small quantities of resin adhere to the surface of seeds and mature stalk.⁴ Thus, based on the scientific literature, it is not practical to produce extracts that contain more than trace amounts of cannabinoids using only the parts of the cannabis plant that are excluded from the CSA definition of marijuana, such as oil from the seeds. The industrial processes used to clean cannabis seeds and produce seed oil would likely further diminish any trace amounts of cannabinoids that end up in the finished product. However, as indicated above, if a product, such as oil from cannabis seeds, consisted solely of parts of the cannabis plant excluded from the CSA definition of marijuana, such product would not be included in the new drug code (7350) or in the drug code for marijuana (7360), even if it contained trace amounts of cannabinoids.⁵

¹ The CSA states: "The term 'marihuana' means all parts of the plant *Cannabis sativa* L., whether growing or not; the seeds thereof; the resin extracted from any part of such plant; and every compound, manufacture, salt, derivative, mixture, or preparation of such plant, its seeds or resin. Such term does not include the mature stalks of such plant, fiber produced from such stalks, oil or cake made from the seeds of such plant, any other compound, manufacture, salt, derivative, mixture, or preparation of such mature stalks (except the resin extracted therefrom), fiber, oil, or cake, or the sterilized seed of such plant which is incapable of germination." [21 U.S.C. § 802\(16\)](#).

² H. Mölleken and H. Hussman. Cannabinoid in seed extracts of *Cannabis sativa* cultivars. *J. Int. Hemp Assoc.* 4(2): 73-79 (1997).

³ See *id.*; see also S. Ross et al., GC-MS Analysis of the Total Δ9-THC Content of Both Drug- and Fiber-Type Cannabis Seeds, *J. Anal. Toxicol.*, Vol. 24, 715-717 (2000).

⁴ H. Mölleken, *supra*.

⁵ Nor would such a product be included under drug code 7370 (tetrahydrocannabinols). See *Hemp Industries Association v. DEA*, 357 F.3d 1012 (9th Cir. 2004) (*Hemp II*). However, as the Ninth Circuit stated in *Hemp II*, "when Congress excluded from the definition of marijuana 'mature stalks of such plant, fiber . . . , [and] oil or cake made from the seeds,' it also made an exception to the exception, and included 'resin extracted from' the excepted parts of the plant in the definition of marijuana, despite the stalks and seed exception." *Id.* at 1018. Thus, if an extract of cannabinoids were produced using extracted resin from any part of the cannabis plant (including the parts excluded from the CSA definition of marijuana), such an extract would be included in the CSA definition of marijuana.

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